



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber)**

Chamber Ref: FTS/HPC/EV/21/1939

Re: Property at 81 Glendale Crescent, Ayr, KA7 3RZ (“the Property”)

Parties:

McLennan Adam LTD., 13 Alloway Place, Ayr, KA7 2AA (“the Applicant”)

Mr Richard Stevenson, Ms Claire McConnell, 81 Glendale Crescent, Ayr, KA7 3RZ (“the Respondents”)

Tribunal Members:

Virgil Crawford (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. The Applicant is the heritable proprietor of the Property. The Applicant is a Limited Company having its registered address at 13 Alloway Place, Ayr, KA7 2AA;
2. By Lease dated 19th July 2018, the property was Let to the Respondents. The name of the Landlord within the Lease is stated as being McLennan Adam Davis Limited. Their address within the Lease is specified as care of Lomond Property, 26 Parkhouse Street, Ayr, KA7 2HH. Lomond Property are the letting agents for the Property;
3. The rent payable in terms of the Lease is £475 per calendar month payable in advance;
4. On 8th January 2021 a Notice to Leave was served upon the Respondents. The Notice to Leave intimated that the Applicants were seeking recovery of the property due to a failure to pay rent and, in particular, in terms of Ground

12 of paragraph 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Notice to Leave advised that an application to the Tribunal would not be submitted prior to 13th July 2021;

5. An application to the Tribunal was made on 11th August 2021. As at that date arrears of rent amounted to £4,475.00;
6. A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was intimated to the relevant local authority;

THE CASE MANAGEMENT DISCUSSION

7. The Case Management Discussion was conducted by teleconference. The Applicant was represented by Mr S Spence of Lomond Property, Ayr. The Respondents did not participate in the Case Management Discussion. The Tribunal was in receipt of a certificate of service by Sheriff Officers confirming that the date, time and details for joining the Case Management Discussion, together with a set of case papers had been intimated upon the Respondents. In the circumstances, the Tribunal, being satisfied in terms of Rule 24 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 that the Respondents had received reasonable Notice of the same, determined that it was appropriate to proceed in accordance with Rule 29 of the said rules;
8. The Tribunal made enquiry of Mr Spence in relation to the identity of the Applicant and the landlord. The application to the Tribunal proceeded in the name of McLennan Adam Limited, 13 Alloway Place, Ayr, KA7 2AA. Title to the Property, in accordance with the land certificate, is held in the name of McLennan Adam Limited having its registered office at 13 Alloway Place, Ayr. The Lease, however, is in the name of McLennan Adam Davis Limited, its address being stated to be care of Lomond Property, 26 Parkhouse Street, Ayr, KA7 2HH;
9. Mr Spence appeared surprised by this matter being raised by the Tribunal and did not appear to have previously noticed the discrepancy. He suggested that there must have been a typing error within the Lease and that the Landlord was truly McLennan Adam Limited;
10. Mr Spence explained that McLennan Adam Limited is a limited company which has been formed by the legal firm known as McLennan Adam Davis in Ayr. A search of the Companies House website disclosed that there is a Limited Company known as McLennan Adam Limited. There is no limited company known as McLennan Adam Davis Limited. The registered address of the limited company is 13 Alloway Place, Ayr. The address of the legal practice is known as McLennan Adam Davis is 13 Alloway Place, Ayr. Instructions to Lomond Property to prepare and issue the Lease to the Respondents were provided by the legal firm and it is assumed that, in error, the name "Davis" was wrongly included within the Lease when it was being drafted. It was clear, however, who the landlord was;
11. In the absence of the Respondents, the Tribunal was content to proceed on that basis;
12. Mr Spence thereafter advised the Tribunal of the following:-

- a. Since the application to the Tribunal was made, 3 further rental payments had been missed. The amount now outstanding was £5,900.00, that being in excess of 12 months rent;
 - b. Mr Spence was not aware of there being any issue with rent being paid by way of benefits. He advised that Lomond Property had, in fact, applied for any housing benefits to be paid direct to them but received no confirmation that there were any benefits in place on behalf of the Respondents which would assist in payment of rent;
 - c. Mr Spence was not aware of whether there were any children residing within the property. Having checked the original application made by the Respondents to Let the property, he ultimately advised the Tribunal that there was no indication that there were any children in the home;
13. The Respondents, as stated, did not participate in the case management discussion. In those circumstances, the Tribunal had no information upon which to conclude that it was not reasonable to grant an Order for eviction on the basis of the significant rent arrears which existed;

FINDINGS IN FACT

14. The Tribunal found the following facts to be established:-
- a) By Lease dated 19th July 2018, the property was Let to the Respondents;
 - b) The rent payable in terms of the Lease is £475.00 per calendar month payable in advance;
 - c) On 8th January 2021 a Notice to Leave was served upon the Respondents. The Notice to Leave intimated that the Applicants were seeking recovery of the property due to a failure to pay rent and, in particular, in terms of Ground 12 of paragraph 3 of the Private Housing (Tenancies) (Scotland) Act 2016. The Notice to Leave advised that an application to the Tribunal would not be submitted prior to 13th July 2021;
 - d) An application to the Tribunal was made on 11th August 2021. As at that date arrears of rent amounted to £4,475.00;
 - e) A Notice in terms of section 11 of the Homelessness etc (Scotland) Act 2003 was intimated to the relevant local authority;
 - f) As at the date of the application to the Tribunal the Respondents were in arrears of rent by an amount greater than one month's rent;
 - g) As at the date of the Case Management Discussion, the arrears of rent were in excess of 12 months rent;
 - h) As at the date of the Case Management Discussion there had been arrears of rent for more than three consecutive months;
 - i) The arrears of rent were not as a result of any delay or failure in the payment of any relevant benefit;
 - j) It is reasonable that an order for eviction be granted;

REASONS FOR DECISION

15. While there was a discrepancy between the name of the landlord within the Lease and the name of the heritable proprietor of the property within the Land Certificate, on the basis of the information provided to the Tribunal, it appeared clear that there had been a typing error in the designation of the Landlord within the Lease and the reason for that error was understandable. It was clear who the landlord of the property was and the Tribunal proceeded on that basis;
16. The Respondents are significantly in arrears of rent. As at the date of the application to the Tribunal £4,475.00, being an amount in excess of 9 months rental payments was outstanding. As at the date of the Case Management Discussion, rent arrears amounted to £5,900.00, being an amount in excess of 12 months rental payments;
17. The Respondents have been in arrears of rent for a continuous period in excess of 3 months;
18. There was no information to enable the Tribunal to find that arrears of rent were due wholly or partly as a result of any delay or failure in the payment of any relevant benefit;
19. In the circumstances, the Tribunal could conclude nothing other than it was reasonable in the circumstances for an Order for eviction to be granted;

DECISION

The Tribunal granted an Order against the Respondent for possession of the property under Section 33 of the Housing (Scotland) Act 1988, said order not to be enforced prior to 12 Noon on 8th December 2021.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Legal Member: Virgil Crawford

Date: 01 November 2021

